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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91181022
Party	Plaintiff American Deli Plus, Inc.
Correspondence Address	Paul T. Kim Locke Lord Bissell & Liddell, LLP The Proscenium - Suite 1900, 1170 Peachtree Street, N.E. Atlanta, GA 30309 UNITED STATES pkim@lockelord.com
Submission	Motion to Extend
Filer's Name	George M. Tompkins
Filer's e-mail	gtompkins@lockelord.com
Signature	/George M. Tompkins/
Date	02/03/2009
Attachments	Opposer's Motion to Clarify Order (revised).pdf (4 pages)(10469 bytes)

In the matter of Application Serial No. 78/755527 for
AMERICAN DELI
Published in the *Official Gazette* on October 2, 2007
(Term for opposition having been extended to
December 3, 2007)

Applicant.

**EXPEDITED CONSIDERATION
REQUESTED**

Opposer American Deli Plus, Inc., (“American Deli”) moves the Board to clarify its Order of January 14, 2009 and, pursuant TBMP 502.02(b), to extend the time for Opposer to respond to Applicant’s Motion to Deny, filed January 8, 2009.

On January 8, 2009, Applicants Yong Lee and Alexander Lee dba Clean Pass of Atlanta (“Applicant” or “Clean Pass”) filed their “Motion to Deny the Opposition to Applicant’s Trademark Application.” The “Motion to Deny” was treated by the interlocutory attorney as a motion for summary judgment. *See* Order of January 14, 2009. Thus, under TBMP 502.02(b), Opposer’s response to Applicant’s Motion for Summary Judgment is due on February 11, 2009 (since it was served by mail on January 7, 2009).

In the Order of January 14, 2009, the interlocutory attorney also noted that Applicant had referenced documentary evidence, but failed to properly introduce and authenticate it. The interlocutory attorney seems to, but does not expressly, invite Applicant to correct this deficiency, nor provide any time by which to do it. By this motion, Opposer requests the following relief: 1) that the Board clarify its Order of January 14, 2009 to either deny Applicant's Motion based on Applicants' failure to properly attached competent evidence or order Applicant to submit competent evidence within a prescribed time, and 2) extend the time for Opposer to respond to Applicant's Motion until the later of i) thirty days after the date set for Applicant to correct its evidentiary problems, ii) fourteen days after the current due date of February 11, 2009, or iii) fourteen days from the date this motion is ruled on.

II. GROUND

As noted by the interlocutory attorney, Applicant referenced documents in support of its Motion which were not properly introduced through an affidavit or declaration. *See* Order of January 14, 2009. The January 14, 2009 order, however, seems to leave open the possibility that the error may be corrected. Obviously, whether Opposer will need to substantively refute the documents referred to in Applicant's motion or only object to them on evidentiary grounds impacts Applicant's response. Opposer, therefore, respectfully requests that the Board clarify its Order by either further ordering that Applicant submit any further evidence in support of its Motion no later than February 24, 2009, or ordering that Applicant's Motion will be ruled on without the aid of the improperly referenced materials. If the Board allows Applicant more time to properly submit evidence, Opposer requests that the Board extend the time for it to respond to the Motion until thirty days after the date set to submit the evidence.

If the Board does not grant Applicant more time to submit evidence in support of its Motion, Opposer nonetheless respectfully requests an additional two weeks to file and serve its response to Applicant's motion. The reason for the requested extension is the premature and unexpected delivery last week of the new daughter of Opposer's lead counsel, Paul Kim. While the new baby is a welcome addition to the Kim family, the delivery has hampered Opposer's efforts in collecting evidence in opposition to Applicant's Motion, particularly since Mr. Kim is the principal client contact. Therefore, Opposer respectfully requests that the Board extend the time to respond to the later of i) thirty days after the date provided to Applicant to correct evidentiary problems; ii) two weeks from the current due date of February 11, 2008, or iii) two weeks from the date the Board rules on this motion.

Respectfully submitted,

By: /George Tompkins/

Paul T. Kim
Locke Lord Bissell & Liddell, LLP
The Proscenium – Suite 1900
1170 Peachtree Street, NE
Atlanta, GA 30309
Tel: (404) 870-4600
Fax: (404) 872-5547

John W. MacPete
George M. Tompkins
Locke Lord Bissell & Liddell, LLP
2200 Ross, Suite 2200
Dallas, TX 75201
Tel: (214) 740-8000
Fax: (214) 740-8800

Counsel for Opposer, American Deli Plus, Inc.

Certificate of Service

I hereby certify that a true and complete copy of the foregoing document has been served on all parties to this proceeding by mailing said copy on February 3, 2009, via First Class Mail, postage prepaid to:

Clean Pass of Atlanta
1228 Christiana Crossing
Lawrenceville, GA 30043

/George Tompkins/